TAN CHEE HOE & ANOR.

v.

RAMJETHMAL PUNJABI

HIGH COURT, SINGAPORE
WEE CHONG JIN CJ
[O.S. NO. 385 OF 1982]
14 APRIL 1983

CONTRACT: *Option to buy property - Meaning of option - Forfeiture of option money if option not exercised - Addition of words in option - Whether it varied the offer - Whether grantor entitled to the forfeiture.*

The respondent, owner of property 'Unit 09-02, Parkway Mansion, Singapore', gave an option to the applicants, to sell the property at $550,000 for a consideration of $11,000 as Option Money which also formed part of the purchase price.

The applicants accepted the offer by signing the Acceptance Copy and delivered it with a cheque for $44,000 to the respondent's named solicitors. However, the words "who will then hold the same as stakeholders" were added on the signed Acceptance Copy. The covering letter also carried such words. As a result respondent took the stand that there was no binding contract as the applicants had varied the offer by the addition of such words. The issue was whether or not there was an unqualified acceptance of the offer to sell the property in question.

Held:
The addition of the words was a material variation of the offer and it amounts to a counter offer on the part of the applicants which was not accepted by the respondent. There was no unqualified acceptance of the respondent's offer to sell the property in question.

[Applicants to pay costs.]

Case referred to:
United Dominions Trust (Commercial) Ltd. v. Eagle Aircraft Services Ltd. [1968] 1 All ER 104

Other sources referred to:
Halsbury's Laws of England, 3rd Edn., Vol 8, p. 75; 4th Edn., Vol. 42, para. 25

For the applicants - M/s. Lim Kiap Khee & Co.
For the respondent - M/s. Advani Hoo Morris & Kumar

JUDGMENT

Wee Chong Jin CJ:

The respondent owned a property known as Unit 09-02, Parkway Mansion, Singapore. He was minded to sell it and through a real estate agent he gave an option to the applicants. The material provisions of the option read as follows:

> In consideration of Dollars Eleven Thousand ($11,000) as Option Money, I Ram Jethmal Punjabi the undersigned owner of the above property, hereby make the following offer which remains open for acceptance in the manner hereinafter stated below.

> I hereby offer to sell to You or Your Nominees who accepts this offer in the manner hereinafter provided the above described property upon the terms as under. The offer may be accepted by the Purchaser signing at the foot of this Option marked 'Acceptance Copy' and delivering the same duly signed together with a Deposit of 10% of the Purchase Price to my solicitors, Advani Hoo Morris & Kumar who are authorised to acknowledge receipt of this deposit before the expiry of this Option.

Terms of Sale

> 1. The sale price shall be Singapore Dollars Five hundred and Fifty thousand ($550,000).
>
> 6. This Option will be valid until 4 pm. on 12 April 1982. If the Option is not exercised by the expiry date, the Option Money of Dollars Eleven Thousand ($11,000) shall be forfeited.
>
> 7. The Option Money herein shall form part of the purchase price.

The applicants purported to accept the offer contained in the option by signing the Acceptance Copy and through their solicitors delivered the same together with a cheque for $44,000 to the respondent's named solicitors. However, on the advice of their solicitors the words "who will then hold the same as stakeholder" were added after the words "Advani Hoo Morris & Kumar" on the signed Acceptance Copy.

The applicants' solicitors in their letter dated 12 April 1982 to the respondent's solicitors enclosing the signed Acceptance Copy also stated as follows:

> Enclosed is the Acceptance Copy duly signed by our clients together with their UOB cheque No. 738995 drawn in your favour for $44,000 being the balance of the 10% deposit, the same is to be held by you as stakeholders.

The respondent took the stand that there was no binding contract as the applicants had varied their offer by the addition of the words "who will then hold the same as stakeholders". Accordingly, the respondent claimed to be entitled to forfeit the option money of $11,000 paid by the applicants.

The only issue that I am called upon to decide is whether or not there was an unqualified acceptance by the applicants of the respondent's offer to sell the property in question.

It is settled law that an option of the kind before the Court is an offer to sell, irrevocable for a stated period, made by the grantor, which the grantee is entitled to convert into a concluded contract of purchase on complying with the conditions on which the option is made exercisable in any particular case (see 42 *Halsbury* 4th Edn. para. 25). Lord Denning MR in *United Dominions Trust (Commercial) Ltd. v. Eagle Aircraft Services Ltd.* [1968] 1 AER 104 at 107 speaking of options to purchase real or personal property or to renew a lease, said:

> In point of legal analysis, the grant of an option in such cases is an irrevocable offer (being supported by consideration so that it cannot be revoked). In order to be turned into a binding contract, the offer must be accepted in exact compliance with its terms. The acceptance must correspond with the offer.

It is plain that the addition of the words "who will hold the same as stakeholders" introduced a fresh term by the applicants, the grantees of the option. It was a material variation of the offer and it amounts to a counter offer on the part of the applicants which was not accepted by the respondent. As is said in *8 Halsbury's Laws of England***,** 3rd Edn. at p. 75:

> In order to constitute acceptance the assent to the terms of an offer must be absolute and unqualified. ... If the acceptance is conditional, or any fresh term is introduced by the person to whom the offer is made, his expression of assent amounts to a counter-offer, which in turn requires to be accepted by the person who made the original offer.

In my judgment there was no unqualified acceptance of the respondent's offer to sell the property in question. The applicants must pay the costs of the originating summons.

Also found at [1983] 2 CLJ 150